

Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Promoting Diversification of Ownership)	MB Docket No. 07-294
In the Broadcasting Services)	
)	
2006 Quadrennial Regulatory Review –)	MB Docket No. 06-121
Review of the Commission’s Broadcast)	
Ownership Rules and Other Rules Adopted)	
Pursuant to Section 202 of the)	
Telecommunications Act of 1996)	
)	
2002 Biennial Regulatory Review – Review of)	MB Docket No. 02-277
the Commission’s Broadcast Ownership Rules)	
and Other Rules Adopted Pursuant to Section)	
202 of the Telecommunications Act of 1996)	
)	
Cross-Ownership of Broadcast Stations and)	MM Docket No. 01-235
Newspapers)	
)	
Rules and Policies Concerning Multiple)	MM Docket No. 01-317
Ownership of Radio Broadcast Stations in)	
Local Markets)	
)	
Definition of Radio Markets)	MM Docket No. 00-244
)	
Ways to Further Section 257 Mandate and To)	MB Docket No. 04-228
Build on Earlier Studies)	
)	
To: The Commission		

COMMENTS OF K-LICENSEE, INC.

K Licensee, Inc. (“Licensee”), by undersigned counsel, hereby submits these Comments in response to the Commission’s *Third Further Notice of Proposed Rule Making* (“FNPRM”) in the above-captioned proceedings. FCC 07-217, released March 5, 2008. Licensee’s Comments herein give additional support to the Comments filed and proposal advanced by the Community Broadcasters Association (“CBA”).

BACKGROUND

Since 1999, Licensee has been the licensee of WEBR-CA, Manhattan, New York. Even longer, a partner corporation, K Media, Inc. ("K Media") had been providing programming to WEBR-CA since the facility's construction in 1996. Both Licensee and K Media had been providing Korean-Americans with the New York Metropolitan Area's only 24/7 terrestrially broadcast Korean language television programming for nearly ten years.

Numerous times, WEBR-CA had unsuccessfully attempted to gain access to cable systems. Absent mandatory cable carriage for Class A television stations, the only means to obtain cable carriage would have been through leased access. The cost of leasing a cable channel is prohibitively expensive. However, due to the onerous costs associated with the maintenance of a free over-the-air ("OTA") television station without cable carriage, Licensee was forced to terminate its Korean language programming in 2005.

Nevertheless, in order to ensure fiscal security, Licensee has been leasing its channel to an English language religious programmer. In doing so, over 200,000 Korean-Americans, a population figure that Licensee believes is under-reported, lost their only source of Korean language television programming.¹ To date, no OTA television broadcaster has been able to fill this programming void.

THE COMPELLING CASE FOR CABLE CARRIAGE OF CLASS A STATIONS

In order to achieve the Commission's laudable goals of programming diversity and localism, Licensee fully endorses CBA's proposal to have the Commission adopt rules requiring cable carriage of Class A television stations. Absent meaningful access to carriage, these goals simply cannot be realized.

¹ See American Factfinder, United States Census Bureau, available at <http://factfinder.census.gov>.

Station value is inextricably linked to potential viewership. Cable system operators control the access to nearly 65% of the U.S. television households. Any obstacle to reaching these viewers greatly impacts a Class A station's ability to succeed as there are fewer potential viewers, fewer potential advertisers and fewer potential investors. It is impossible for a broadcaster to survive by providing a free OTA programming stream alone, and the courts and the Commission have recognized this fact.

The Commission currently possesses the legal authority to expand its definition of "full-power" to include Class A television stations under the Communications Act of 1934, as amended ("the Act"). Section 614(a) establishes that "the signals of local commercial television stations" shall be carried on cable systems.² Although qualified low power television stations shall be carried as well, Section 614 places substantial limitations on these access rights.³ Section 614(h)(1)(A) defines a local commercial station as a full power television broadcast station licensed and operating on a channel regularly assigned to its community by the Commission.⁴ Although the definition of local commercial television station explicitly excludes low power television stations operating pursuant to Part 74 of the Commission's Rules, Class A television stations do not fall within this classification as they operate pursuant to Subpart J of Part 73.⁵ Therefore, there is no statutory bar to the inclusion of Class A television stations to the local commercial television station definition.

To effectuate the CBA's goal of securing carriage rights for Class A television stations, Class A stations would first need to be deemed full power stations. Power limitations for analog

² 47 U.S.C. § 534(a).

³ *See generally*, 47 U.S.C. § 534 (c)(1).

⁴ 47 U.S.C. § 534(h)(1)(A).

⁵ 47 U.S.C. § 534(h)(1)(B)(i). *See also*, 47 C.F.R. §§ 73.6000 *et seq.*

Class A television stations range from 3 kw for VHF to 150 kw for UHF stations.⁶ These power levels in fact overlap with the full power analog television station limitations which are limited to 100 kw for VHF and 5,000 kw for UHF.⁷ Thus, for definitional purposes, a Class A station operating at maximum power could be classified as a full power station.

Second, to be eligible for carriage under Section 614 of the Act, a Class A station would need to be “assigned to a community.” The FCC has generally interpreted this provision to require the station’s community to be listed in the Commission’s Table of Allotments.⁸ There is nothing in the Act or in the Commission’s rules that would bar the Commission from expanding the Table of Allotments to include the community of license of any Class A station seeking carriage rights.

CONCLUSION

Licensee fully supports the proposal and supporting comments of CBA, which are being filed today, in this proceeding. Without cable carriage rights, the Commission’s goals of programming diversity and localism remain frustrated. Class A stations, deprived of carriage rights, continue to operate at a competitive disadvantage and continue to face severe economic difficulties. If the FCC allows these stations to continue to fail, communities will lose diverse and local programming that routinely fills a discrete community’s needs.

With carriage rights, Licensee is eager to resume delivering Korean language programming to its viewers. Due to language barriers, most of these viewers obtain news and

⁶ 47 C.F.R. § 74.735.

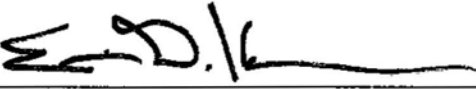
⁷ 47 C.F.R. § 73.614.

⁸ 47 C.F.R. § 73.606, setting forth the analog Television Table of Allotments. *See also*, 47 C.F.R. § 73.622, setting forth the digital television Table of Allotments.

information through Korean language media. The Commission has within its arsenal the legal authority to effectuate this goal and should quickly act to exercise that authority.

Respectfully submitted,

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